

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff,

vs

Criminal Action
No. 15-227

JOHN FRANCIS LEY,
Defendant.

Transcript of sentencing proceedings held on Monday, September 19, 2016, United States District Court, Pittsburgh, Pennsylvania, before the Honorable Terrence F. McVerry, U.S. District Court Senior Judge.

APPEARANCES:

For the Government:

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1 P R O C E E D I N G S

2 (In open court.)

3 THE COURT: Good morning; please be seated.

4 It is Monday, September the 19th, 2016, at
5 approximately 9:30 a.m., the date and time scheduled for
6 sentencing in the matter of United States of America versus
7 John Francis Ley at Case No. 15-227.8 Would counsel for the Government and for Mr. Ley
9 kindly enter your respective appearances on the record.10 MS. DOOLITTLE: Good morning, Your Honor. May it
11 please the Court, Barbara Doolittle on behalf of the
12 United States.13 MR. HACKNEY: Penn Hackney with the Federal Public
14 Defender for Mr. Ley.

15 THE COURT: Thank you.

16 Since the guilty plea in this court on June 27, 2016,
17 I note for the record the preparation of the following by the
18 Probation Office: A presentence investigation report prepared
19 on August 11, 2016, and an addendum to that report on -- I
20 don't have the actual date down on that -- there is an addendum
21 to that report and it's not on my desk right now -- I think
22 that addendum was in September, September 25, 2016?23 PRETRIAL AND PROBATION OFFICER: August 25th,
24 Your Honor.

25 THE COURT: August 25th, okay.

9:42:27AM 1 I would also note for the record the filing of the
2 following: The Government's position with regard to sentencing
3 factors filed on August 18, 2016, which indicates that the
4 Government has no objections or modifications to the
5 presentence investigation report; the Defendant's objection to
6 the presentence investigation report and memorandum in
7 mitigation of sentencing along with Defendant's personal letter
8 to the Court filed on September 12, 2016, in which counsel for
9 Defendant argues that the two prior convictions set forth in
10 Paragraphs 35 and 36 of the presentence investigation report
11 should be counted as single -- as a single sentence for the
12 purposes of calculating Defendant's criminal history score; the
13 letter by Mary Beth Ackerman in support of Defendant which was
14 received by the Court on August 31, 2016; the Court's tentative
15 findings and rulings filed on September 14 in which the Court
16 overruled Defendant's objection to the presentence
17 investigation report and tentatively ruled that the two prior
18 sentences in Paragraphs 35 and 36 of the presentence
19 investigation report were properly counted by the Probation
20 Office.

21 On Friday there was a request for service of subpoena
22 pursuant to Rule 17(b) of the Federal Rules of Civil Procedure
23 filed on behalf of Mr. Ley, and the Court denied that
24 memorandum order because of the lack of any specificity as to
25 who that witness was, although the witness was named in the

9:44:25AM 1 proposed order, but there was nothing about the potentiality of
2 what the testimony would be if that witness were subpoenaed to
3 the court, and so therefore that was denied on Friday.

4 And also on Friday a supplemental addendum to the
5 presentence investigation report was filed by the Probation
6 Office and addressed the Probation Office's retort to the
7 Defendant's position that the two arrests or two experiences
8 with law enforcement in September that followed one day after
9 another were not being treated as one offense. And so the
10 Probation Office agreed with the Court's finding in that same
11 regard.

12 So have the Defendant, Mr. Ley, and his attorney,
13 Mr. Hackney, reviewed the documents to which I have made
14 reference?

15 MR. HACKNEY: We have, Your Honor.

16 THE COURT: And has the United States also reviewed
17 these documents?

18 MS. DOOLITTLE: Yes, Your Honor.

19 THE COURT: Lastly, I also note for the record the
20 United States Supreme Court's decision in 2005 in the case of
21 United States versus Booker by which the United States
22 sentencing guidelines have been declared to be advisory
23 recommendations and are no longer mandatory. Also under more
24 recent Supreme Court precedent, a sentencing court may not
25 presume -- that means take for granted -- that a guideline

9:46:10AM 1 advisory range of sentences is reasonable. Accordingly, the
2 guidelines are not only not mandatory, they are also not to be
3 presumed or taken for granted as reasonable.

4 Mr. Hackney, would you kindly bring Mr. Ley forward
5 to the podium to be sworn.

6 (Defendant and Mr. Hackney approach.)

7 (Defendant sworn.)

8 THE COURT: You are John Francis Ley, are you not?

9 THE DEFENDANT: Yes.

10 THE COURT: In a proceeding in this Court on June 27,
11 2016, you pleaded guilty to one count of a one-count indictment
12 that charged you with the crime of possession of a firearm
13 and/or ammunition by a convicted felon on or about
14 September 1st, 2015, in violation of Title 18, United States
15 Code, Section 922(g)(1). Is that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Following your guilty plea, do you recall
18 having indicated your willingness to be interviewed by the
19 Probation Office in connection with the preparation of a
20 presentence investigation report?

21 THE DEFENDANT: Yes.

22 THE COURT: I have reviewed the complete file in this
23 case, the Probation Office's presentence investigation report
24 and addendum, the Government's position with respect to
25 sentencing factors, you and your attorney's objection to the

9:47:54AM 1 presentence investigation report and your attorney's memorandum
2 in mitigation of sentencing, along with your well written
3 letter to the Court, the letters submitted by Miss Ackerman,
4 also well written, my tentative findings and rulings, and the
5 recommendation of the Probation Office with regard to an
6 appropriate sentence.

7 Pursuant to Federal Rule of Criminal Procedure
8 32(e) (3), I find that it is not appropriate to disclose the
9 sentence recommendation of the Probation Office to you, your
10 attorney, or the Government's attorney. However, in
11 determining your sentence the Court will not otherwise consider
12 any factual or legal matter that has not previously been
13 disclosed to you and your attorney.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Hackney, having reviewed the
17 presentence investigation report and addendum, your objection
18 to the presentence investigation report and memorandum in
19 mitigation of sentencing, along with Mr. Ley's letter, the
20 Government's position statement with regard to sentencing
21 factors, and my tentative findings and rulings, and having
22 discussed them with your client, are there any errors in these
23 documents that you have not already called to the Court's
24 attention?

25 MR. HACKNEY: No, sir.

1 THE COURT: Mr. Ley, have you reviewed and discussed
2 with Mr. Hackney the presentence investigation report and
3 addendum, you and your attorney's objection to that report and
4 memorandum in mitigation of sentencing, along with your letter
5 to the Court, the Government's position statement, and my
6 tentative findings and rulings?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that correct, Mr. Hackney?

9 MR. HACKNEY: Yes, sir.

10 THE COURT: Miss Doolittle, what's the Government's
11 position with regard to the Court's tentative findings and
12 rulings?

13 MS. DOOLITTLE: The Government's position is, quite
14 frankly, Your Honor, that we are grateful for your exposition
15 on the law in this regard because it matches the Government's
16 position, in particular with the discussion of the intervening
17 traffic stop, if you will, counted as an intervening arrest for
18 the purposes of alerting the Defendant to unlawful conduct and
19 giving him the opportunity to mend his ways, and then of course
20 very shortly thereafter he's continuing in the same type of
21 conduct.

22 So with respect to that in particular, but the
23 tentative findings in general, the Government doesn't have any
24 objections to the Court's tentative findings.

25 THE COURT: Okay.

9:50:42AM 1 Mr. Hackney, what's the Defendant's position
2 regarding the Court's tentative findings and rulings?

3 MR. HACKNEY: We too are grateful for the Court's
4 exposition of the law on the matter, Your Honor. You came down
5 on one side. I object to that decision. I don't have anything
6 to add to the argument. I think the Court laid it out fairly
7 and accurately, I just think that the side the Court came down
8 on was wrong, Your Honor.

9 THE COURT: Okay. The Court hereby adopts its
10 tentative findings and rulings and the relevant findings in the
11 presentence investigation report that are applicable to the
12 sentencing determination.

13 Mr. Hackney, as counsel for Mr. Ley, is there
14 anything you would like to say or present on behalf of your
15 client at this time?

16 MR. HACKNEY: Yes, Your Honor. With respect to our
17 witness, we decided we'd rather submit a brief statement in any
18 event rather than try to get him in and explain to the Court
19 why we needed him. It refers to Paragraph 41 of the
20 presentence report. There is a pending robbery charge and the
21 description of the conduct in there was sort of -- was odd in
22 my experience, so I wanted to check that and see if that was
23 accurate. And we did talk to the victim who was a -- alleged
24 victim, who was a Devon Hale, and we did get a brief statement
25 from him essentially confirming the way it's set forth in

9:52:04AM 1 Paragraph 41.

2 THE COURT: Paragraph 41 of the psi?

3 MR. HACKNEY: Yes, Your Honor. I offer that for the
4 Court's consideration as Defendant's Exhibit A. I have given a
5 copy to the Government, Your Honor.

6 THE COURT: I was just going to ask that question,
7 thank you.

8 Does the Government have any objection to the Court
9 accepting this statement for whatever it's worth?

10 MS. DOOLITTLE: I don't have an objection to that. I
11 guess I'll reserve argument for the value of that.

12 THE COURT: Okay. Let me take a quick look at this.

13 (Brief pause in proceedings.)

14 THE COURT: Okay. So this is the guy who was working
15 at the station at the time.

16 MR. HACKNEY: Yes, Your Honor.

17 THE COURT: Okay, it's your turn.

18 MR. HACKNEY: Your Honor, I'm asking Your Honor to
19 consider a sentence closer to 37 months than to 46 months. I
20 realize that 46 months is the low end of the range that
21 Your Honor has found; but as Your Honor also has pointed out,
22 that that is an advisory range.

23 Mr. Ley's longest prior sentence was the
24 11-and-a-half to 23 month sentence that is referred to in
25 Paragraph 33, Your Honor, back in 2005. Sentence was imposed

9:53:54AM 1 in 2007; the conduct was in 2005. I would ask Your Honor to
2 consider that a sentence of much more than 36 months is not
3 conducive to the rehabilitation of Mr. Ley or to the safety of
4 the community or to promote the seriousness of the offense.

5 Mr. Ley, after that, those cases that were sentenced
6 in 2007, Your Honor, was able to show that he can live a
7 law-abiding, constructive life raising children, having a job,
8 in a committed relationship, and for almost eight-and-a-half
9 years, Your Honor. So I think that this series of events in
10 late August -- August 31 and September 1 are not the last
11 chapter in Mr. Ley's life. They're not illustrative of what
12 he's capable of, of what he can do and what he wants to do in
13 the future.

14 I don't think that the 46 months would serve to
15 impress upon him the need to not fall into that pattern again.
16 I think something less than that would do just as well -- would
17 do even better, in fact.

18 And I also point out, Your Honor, that the two points
19 that are assigned to the criminal history category in
20 Paragraphs 35 and 36 happened because of my dilatoriness, my
21 inability to move the case forward. Mr. Ley had been asking me
22 to move his case forward starting in January, and I was just
23 not -- could not do so. So if I had been more assiduous in my
24 responsibilities, we would have been here being sentenced
25 before those cases wrapped up, and therefore those points would

9:55:55AM 1 not be on the criminal history score.

2 So as a compassionate reason for considering a
3 sentence closer to 37 months than to 46 months, I submit that
4 the timing of getting those points that moved him from category
5 three to category four don't need to be insisted upon in the
6 Court's final sentencing decision.

7 THE COURT: But they're real.

8 MR. HACKNEY: Pardon?

9 THE COURT: They're real.

10 MR. HACKNEY: Yes.

11 THE COURT: They happened.

12 MR. HACKNEY: Yes, I know. But I'm just saying --

13 THE COURT: But you had a schedule of trials one
14 after another, after another, after another, after another; and
15 that's what you told me in your filings.

16 MR. HACKNEY: I'm just saying --

17 THE COURT: And that's real. Maybe you could have
18 gotten another FPD to represent Mr. Ley in a sooner way.

19 MR. HACKNEY: I'm by no means saying you have to do
20 anything about that, Your Honor. I'm just -- I'm just
21 appealing to your discretion --

22 THE COURT: I know that you can't make me do it and I
23 appreciate your argument, but --

24 MR. HACKNEY: That's all, it's just --

25 THE COURT: It isn't -- it isn't a fault that should

9:56:59AM 1 be assigned to you or that you should be assuming because you
2 were busy.

3 MR. HACKNEY: I just wanted to suggest it to
4 Your Honor's discretion to consider in whatever way Your Honor
5 thinks is appropriate in deciding what the final sentence
6 should be under 3553(a). The guidelines do work in a fairly
7 mechanical way in some instances. This is just an example of
8 the way the mechanics worked to Mr. Ley's disadvantage, through
9 no fault of his in any way in terms of the timing.

10 THE COURT: The Court -- it doesn't fall on deaf ears
11 that Mr. Ley demonstrated for a period of time between bouts of
12 criminality that he could stay clean, but he didn't stay clean.
13 That's what brings him back here. So, you know, to say he
14 should have a shorter sentence because he has proven in one
15 eight-year period of his life that he can stay clean, if he
16 did, he didn't get arrested, that's what happened. We don't
17 know for sure, but he didn't get arrested, so theoretically he
18 wasn't engaging in criminal activity for that period of time
19 and he won't be punished as though he was engaging in criminal
20 activity.

21 But this is a new series of events that he did do, so
22 he returned to his former life. We don't know -- frankly,
23 there's no way for us to know that when he comes out of prison
24 this time whether he won't revert to his former criminality
25 type of life. We don't know that.

9:58:50AM 1

MR. HACKNEY: I --

2 THE COURT: But there is one thing that he has made
3 clear to me and that I will recommend to the Bureau of Prisons,
4 and that is that he get drug rehabilitation treatment and that
5 he get mental health treatment. Both of those are having --
6 have been requested and both of them will be recommended
7 because he likely needs that. And he recognized that he needs
8 it because he put it in his own filing about mental health
9 treatment. I had this drafted first, to just be the drug
10 treatment and counseling, but we'll expand that to accommodate
11 your request, and I think it's a good request.

12 Mr. Ley, do you have anything additional you would
13 like to say or present on your own behalf before sentencing?

14 THE DEFENDANT: Yes, Your Honor. I was immature and
15 irresponsible in my decisions and I would respect your decision
16 and try to work and build myself from it. That's all.

17 THE COURT: Okay.

18 MR. HACKNEY: I wasn't suggesting, Your Honor, so
19 much a reward for the eight years, but suggesting that it helps
20 in the prognostication of what Mr. Ley is capable of, which to
21 me is a substantial mitigating factor that ought to operate to
22 adjust the sentence to some degree.

23 THE COURT: I guess that same reasoning can be
24 applied to the prognostication that he return to criminal
25 conduct after eight years of being straight. So that's not a

10:00:36AM 1 good sign. But I do, frankly, commend you on trying to stay on
2 the straight and narrow for that number of years and working
3 and taking care of a family during that period of time, so that
4 is something to your credit and something for you to remember
5 when you're finished with whatever sentence is applied in this
6 case today.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay?

9 Are you in any way dissatisfied with the service,
10 advice or representation provided by Mr. Hackney in this
11 matter?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Miss Doolittle, does the Government have
14 any position or statement regarding sentence?

15 MS. DOOLITTLE: Yes, Your Honor. There are a few
16 things I'd like to place on the record.

17 Let me begin with the submission of Defense
18 Exhibit A, which is the statement from Devon Hale, the
19 individual who is, I suppose, listed as a victim in the still
20 pending crime at Paragraph No. 41 of the PSI.

21 THE COURT: Yes.

22 MS. DOOLITTLE: I just want to note I have read all
23 the police reports from that particular case, and it does not
24 appear that this statement, A, negates anything in the police
25 report nor does it say anything about Defendant's mens rea at

10:02:00AM 1 the time that he took those actions. So to the extent that
2 there's any weight to be placed on this particular exhibit, the
3 Government's argument is that it should have no weight, it
4 really doesn't change anything.

5 To discuss for a moment the eight-and-a-half years
6 that the defense argues the Defendant had a clear record, I'd
7 like to clarify that a little bit. The Defendant was sentenced
8 in January of 2007 with a sentence of 11-and-a-half to 23
9 months. And in my discussions with the Probation Office, it's
10 unclear as to how many months he actually served. But,
11 nonetheless, he had an almost two-year sentence and whatever
12 portion he didn't serve would have been on parole.

13 Following that, he had a five year probationary
14 sentence tacked onto his jail time. And then in 2008 when he
15 was done with that sentence, he picked up another case where he
16 was given yet another five years of probation to be served
17 consecutively, based on what's in the PSIR. So there's a long
18 term of probation that the Defendant was on and some length of
19 jail time; and that eight-and-a-half years he was on paper,
20 which is to say he might be good at staying clean, but it's
21 because he's under supervision. It's not because he's out on
22 his own in the world and not responsible to somebody or not
23 accountable to somebody and under Court supervision.

24 In addition to that, during this eight-and-a-half
25 clean period, we also see that the Defendant was arrested a

10:03:37AM 1 couple of times, and that is in the PSIR. It doesn't have any
2 points attached to it because they were arrests that were
3 ultimately dismissed or pled down to summaries, so not ultimate
4 convictions. But at Paragraph 46 and 47 it appears they were
5 both dismissed. The Defendant engaged in conduct and was in
6 trouble with the police, even if they were small cases, prior
7 to the instant incidence. So again there is more to the story
8 than just eight-and-a-half years of good behavior, working,
9 clean, productive member of society type of behavior.

10 I did want to note again, Your Honor, that the
11 Government did appreciate your tentative findings and the legal
12 exposition. In fact, I was sitting down to begin researching
13 to counter the defense's argument or find what research I could
14 find to say that a stop of that kind could be considered an
15 intervening arrest; and, frankly, the Court's tentative
16 findings and then the Probation Office's response obviated the
17 need for me to, you know, quote, beat the proverbial dead
18 horse. But it is the Government's position what the Court has
19 found and what the Probation Office has found in that respect.

20 There's two other things that I think need to be
21 brought up based on the defense's sentencing memorandum. The
22 first of these is with respect to the argument that the
23 Defendant here would have pled sooner but for counsel's
24 schedule, and that smells a lot like a preemptive claim of
25 ineffective assistance of counsel. So I would like, if defense

10:05:23AM 1 counsel has a statement regarding that, for that to be placed
2 upon the record because this Defendant has pled without a plea
3 agreement. And obviously as someone who has to handle the 2255
4 motions that come through from her own cases, I'm concerned
5 about the import of the defense counsel's statement in that
6 regard.

7 And I would say that even if counsel had had a wide
8 open calendar and could have accommodated Mr. Ley's request in
9 January, if in fact he did start making that request, it
10 presumes that the Court's calendar would have also been able to
11 accommodate the request and that this AUSA's calendar would
12 have been able to accommodate that request; and I don't think
13 that we can do that.

14 The other thing that it presumes is that certain
15 action would or wouldn't have been taken by the County
16 officials who would have brought him in and had him plead to
17 those cases before bringing him back into federal custody. So
18 there are a lot of what ifs and a lot of question marks there,
19 and I think that takes away from the defense's argument that
20 had he had his own open calendar, Mr. Ley wouldn't have been
21 assigned those points.

22 And again the Government is concerned that this is a
23 preemptive claim of ineffective assistance of counsel. If the
24 Court feels it necessary, the Government would be grateful for
25 the Court's finding that, in fact, at least based on the facts

10:06:36AM 1 that have thus far been presented, Mr. Hackney was not
2 ineffective. And, of course, I don't know if Mr. Hackney has
3 anything more to say about that.

4 And then, finally, in the administrative resolution
5 court period of time, while the presentence investigation draft
6 was circulated, one of the things I brought to Mr. Hackney's
7 attention and did not hear any further about is the fact that
8 Mr. Ley is assigned an offense level of 20 points because under
9 2K2.1 he has a prior felony conviction for a crime of violence
10 or drug trafficking offense. In his case the prior conviction
11 is for an aggravated assault.

12 As the Court may be very well aware, the Public
13 Defender's office has taken the position on many 2255s, as has
14 the defense counsel bar post-Johnson and post-Mathis and some
15 of the other cases that are being decided and have come down,
16 that an aggravated assault does not qualify as a crime of
17 violence for the purposes of 2K2.1. It's the Government's
18 position that Johnson has nothing to do with 2K2.1 and the
19 findings there in the residual clause do not affect the fact
20 that an aggravated assault under Pennsylvania law is still a
21 crime of violence and is still effective and does not change
22 how we look at 2K2.1.

23 But defense counsel hasn't brought this up; and I
24 want to be very clear that if they're not going to bring it up,
25 they're waiving this issue on direct appeal. As the Court well

10:08:15AM 1 knows, this is a morass and there is too much at stake here —

2 THE COURT: That's an understatement.

3 MS. DOOLITTLE: -- for continuing litigation. So
4 again these are two issues that I am spotting now with the
5 hopes that we can resolve some of them or at least get
6 something on the record, those two issues being, one, the
7 Defendant counsel's implied, I'll say, ineffective assistance
8 of counsel claim and, two, the implied waiver of the 2K2.1
9 argument under Johnson.

10 THE COURT: Well, when I made a comment about
11 Mr. Hackney's schedule as an assistant public defender, and
12 knowing that he's in this building and one of the courtrooms of
13 this building virtually every business day, and knowing what
14 the Public Defender's caseload is, there is nothing in which I
15 can observe Mr. Hackney's performance in this case to be
16 ineffective on behalf of Mr. Ley. He's a very effective and
17 well-recognized criminal defense lawyer who's been doing his
18 job for the Public Defender for -- I won't say for as long as
19 I've been alive, but for as long as I've been here and before
20 that. And so there's nothing ineffective about the manner in
21 which he represents his clients in general and specifically in
22 this case.

23 MS. DOOLITTLE: Thank you, Your Honor.

24 MR. HACKNEY: Your Honor, with respect to the Johnson
25 question, I appreciate the Government raising that. We did

10:09:52AM 1 not -- I did not file any written objection for the record. I
2 do object. I realize the district courts in this district have
3 not agreed with us on the point, and -- but for whatever it's
4 worth, there may be a benefit to Mr. Ley in the future, I take
5 the contrary position to the Government and believe that
6 Johnson does apply to 2K2.1; and that if it did apply, that the
7 aggravated assault would not count as a crime of violence.

8 THE COURT: Well, that issue is not before me today,
9 and -- other than you're making it before me, but I'm not
10 getting into it because whenever and if ever such a motion is
11 filed, I don't be here anymore, so it will be before somebody
12 else and be decided by somebody else.

13 But I wanted in response to your argument to put on
14 the record that Mr. Hackney's not ineffective in Mr. Ley's
15 representation or any of his other clients on behalf of the
16 Public Defender's office.

17 MS. DOOLITTLE: Thank you, Your Honor.

18 THE COURT: Mr. Hackney, is there any legal cause or
19 reason then why sentence should not now be pronounced?

20 MR. HACKNEY: No, sir.

21 THE COURT: Under the now advisory provisions set
22 forth in the United States Sentencing Guidelines, your base
23 offense level, Mr. Ley, was a 20. That's been increased by two
24 levels pursuant to United States Sentencing Guidelines
25 Section 2K2.1(b) (4) (A) because the firearm was stolen; and then

10:11:33AM 1 this number is reduced by three levels based on your acceptance
2 of responsibility and timely guilty plea. Accordingly, your
3 total offense level is a 19.

4 Your criminal history category is a four, and you're
5 in Zone D for sentencing purposes under the advisory
6 guidelines.

7 The statute that applies to the crime to which you
8 have pled guilty and have been found guilty calls for a period
9 of incarceration of not more than ten years; if you were to be
10 eligible for probation, it would be from one to five years; if
11 imprisoned, supervised release of not more than three years;
12 and a fine up to \$250,000; a special assessment of \$100 per
13 count of the indictment to which you've been found guilty.

14 Now, the advisory guidelines that apply to this
15 violation are within the statute but less time, a period of
16 incarceration of between 46 to 57 months. Under the guidelines
17 you're not eligible for probation because this crime is in
18 Zone D of the sentencing guidelines; supervised release of one
19 to three years if imprisoned; a fine in the range of 6,000 to
20 \$60,000; and a special assessment of \$100 per count of the
21 indictment to which you've been found guilty, which is -- would
22 be a total of \$100.

23 In accordance with Section 3553 of the Sentencing
24 Reform Act, in sentencing you the Court has taken into
25 consideration the following factors: The nature and

10:13:33AM 1 circumstances of the offense as set forth in the indictment,
2 the plea hearing record and the presentence investigation
3 report, the history and characteristics of you, John Francis
4 Ley, which are set forth at length in the presentence
5 investigation report and include your personal and family data,
6 your physical condition, your drug abuse history, your mental
7 and emotional health, your educational and vocational skills,
8 and your employment record.

9 Mr. Ley, you're being sentenced today for possessing
10 a firearm after having previously been convicted of a felony.
11 You were apprehended with the firearm after a warrant was
12 issued for your arrest following the alleged attempt to rob a
13 gas station convenience store. In addition to the firearm,
14 drugs and a large knife were also found in the vehicle at the
15 time.

16 You are nearly 31 years old. Without question you
17 had a very difficult upbringing. You had no relationship with
18 your father, who died of a drug overdose when you were young,
19 and your mother was herself a drug addict and could not support
20 you. As a result, you were placed into the custody of your
21 grandfather at the age of 7. You then spent a large portion of
22 your teenage years in and out of various juvenile
23 rehabilitation facilities after you became involved in the
24 juvenile justice system.

25 You eventually were able to earn your GED while in

10:15:20AM 1 one of those placement facilities.

2 You have never been married, but you do have one
3 biological daughter who resides with her mother, and you also
4 consider your girlfriend's daughter like she's your own child.

5 To your credit, you have a fairly consistent
6 employment record, having most recently worked at Gateway Grill
7 in Monroeville as a cook, making \$13 an hour. You worked there
8 until 2014 when you injured your right shoulder at work and had
9 to undergo surgery. Prior to that, you worked as a cook at a
10 few other restaurants.

11 You report that your physical health is moderate.
12 You have a history of treatment for a broken jaw and, as
13 mentioned, the injury to your shoulder. And as of the date the
14 PSI was prepared, you were awaiting an ultrasound for a lump on
15 your esophagus and one in your throat. You have also
16 apparently been diagnosed with bipolar disorder and anxiety
17 disorder which long went untreated, but for which you have been
18 getting treatment since you've been incarcerated.

19 Moreover, as you put it eloquently in your letter to
20 the Court, you have fallen victim to the vicious cycle that has
21 followed your family and life, meaning drugs. You have a long
22 history of serious drug and alcohol use and abuse which
23 includes daily use of Xanax, marijuana, prescription opiates
24 and, most recently, intravenous heroin which you started using
25 after the prescription opiates you were prescribed apparently

10:17:13AM 1 for your shoulder injury started to make you sick.

2 Mr. Ley, you don't need me to tell you this because
3 it's apparent that you also recognize it, but your addiction
4 has taken control of your life and led you back down a path of
5 criminality that began when you were just 13 years old. You
6 have been convicted on multiple occasions for drug offenses,
7 burglary, theft and assault. However, as Mr. Hackney notes in
8 his sentencing memorandum, your criminal behavior appears to
9 have taken place in three distinct phases: During your youth,
10 in 2005 through 2006, and in 2015.

11 Between your conviction in 2007 and your convictions
12 in 2015, you appear to have lived a decent, hardworking life.
13 However, as the Government has pointed out, during that period
14 you were under supervision a good deal of the time.

15 You became a father, apparently kept your addiction
16 in check, and successfully completed a term of probation
17 without incident. Unfortunately, when you once again came
18 under the grip of drugs, all this fell apart, and that's why
19 you find yourself before me today.

20 Based on my consideration of the record in this case,
21 I find that a term of imprisonment at the low end of the
22 guideline range is appropriate under the circumstances. Such a
23 term of imprisonment will impress upon you the seriousness of
24 your offense and hopefully deter you from continuing to engage
25 in criminal behavior once you are released. Most importantly,

10:19:09AM 1 though, this term of imprisonment will help you get the mental
2 health treatment that you need as well as the necessary drug
3 and/or alcohol treatment so that you may finally rid yourself
4 of the scourge of addiction and once again become a productive
5 member of society, something that you have shown you can do in
6 the past when you're provided some structure in your life.

7 Therefore, pursuant to the Sentencing Reform Act, it
8 is the judgment of the Court that you, John Francis Ley, are
9 hereby committed to the custody of the Bureau of Prisons to be
10 imprisoned for a term of 46 months. Upon completion of your
11 term of imprisonment, you shall be placed on supervised release
12 for a period of three years. Within 72 hours of your release
13 from the custody of the Bureau of Prisons, you shall report in
14 person to the Probation Office in the district to which you are
15 released.

16 While you are on supervised release you shall not
17 commit another federal, state or local crime and you shall
18 comply with the standard conditions that have been recommended
19 by the Sentencing Commission and adopted by this Court. You
20 shall also comply with the following conditions.

21 You shall not illegally possess a controlled
22 substance.

23 You shall not possess a firearm, ammunition,
24 destructive device or any other dangerous weapon.

25 You shall participate in a mental health assessment

10:20:51AM 1 and/or treatment program approved by the Probation Office until
2 such time as you're released from the program by the Probation
3 Office. You shall be required to contribute to the cost of
4 services in an amount determined by the Probation Office.
5 These costs shall not exceed the actual cost of the service.
6 The Probation Office is authorized to -- the Probation Office
7 is authorized to release the Defendant's presentence
8 investigation report to the treatment provider if so requested.

9 You shall submit your person, property, house,
10 residence, vehicle, papers, business, or place of employment to
11 a search conducted by a United States probation officer or a
12 law enforcement officer at a reasonable time and in a
13 reasonable manner based upon reasonable suspicion of contraband
14 or evidence of a violation of a condition of supervision.
15 Failure to submit to a search may be grounds for revocation.
16 You shall inform any other residents that the premises may be
17 subject to searches pursuant to this condition.

18 You shall participate in a program of testing and, if
19 necessary, treatment for substance abuse, with said program to
20 be approved by the Probation Office, until such time as you're
21 released from the program by the Court. Further, you shall be
22 required to contribute to the cost of services for any such
23 treatment in an amount determined by the Probation Office but
24 not to exceed the actual cost.

25 You shall submit to one drug urinalysis within

10:22:43AM 1 fifteen days after being placed on supervision and at least two
2 periodic tests thereafter.

3 You shall not intentionally purchase, possess, and/or
4 use any substances designed to simulate or alter in any way
5 your own urine specimen. In addition, you shall not purchase,
6 possess and/or use any devices designed to be used for the
7 submission of a third party urine specimen.

8 You shall cooperate in the collection of DNA as
9 directed by the Probation Office and pursuant to 28 CFR 2812,
10 the DNA Fingerprint Act of 2005, and the Adam Walsh Child
11 Protection and Safety Act of 2006.

12 A mandatory special assessment of \$100 on each count
13 of conviction for a total of \$100 is imposed pursuant to
14 Title 18, United States Code, Section 3013, which shall be paid
15 to the US District Court Clerk forthwith.

16 Based on the financial information contained in the
17 presentence investigation report, the Court finds that you do
18 not have the ability to pay a fine and therefore the Court will
19 waive any fine in this matter.

20 The Court will make the following recommendations to
21 the Bureau of Prisons: That you be afforded the opportunity to
22 have ongoing substance abuse treatment and mental health
23 treatment while imprisoned.

24 This sentence as imposed is sufficient but not
25 greater than necessary to conform with the statutory

10:24:37AM 1 requirements and the Sentencing Guideline recommendation and to
2 avoid unwarranted sentencing disparities among similarly
3 situated Defendants. The sentence is based on the need to
4 reflect the seriousness of the offense, to promote respect for
5 the law, to provide just and sound punishment for the offense,
6 to afford adequate deterrence to criminal conduct, to protect
7 the public from further crimes by you, and to provide you with
8 needed educational or vocational training or other correctional
9 training of which I hope you avail yourself in the most
10 effective manner while incarcerated.

11 Mr. Ley, you have the right to appeal from the orders
12 of this Court, the judgment of guilt, and/or the sentence
13 imposed today. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You have the right to have a lawyer
16 represent you on appeal; and if you cannot afford a lawyer, one
17 will be appointed for you at no cost to yourself. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you cannot afford certified copies of
21 the necessary court records and transcripts, they'll be
22 furnished to you at the expense of the United States
23 Government. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Finally, you must know that if you do

10:26:00AM 1 wish to appeal, you must do so -- that is appeal -- within
2 fourteen days of today. If you do not appeal within fourteen
3 days of today, you will lose your right to appeal. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you request, the Clerk of Court will
7 immediately prepare and file a notice of appeal on your behalf.
8 Do you want the Clerk of Court to prepare and file a notice of
9 appeal for you?

10 THE DEFENDANT: No, sir.

11 MR. HACKNEY: Your Honor, I will discuss appeal with
12 Mr. Ley; and if he chooses to appeal, we'll undertake the
13 responsibility to file the notice on time.

14 THE COURT: Very good. Thank you.

15 Defendant shall begin his sentence of imprisonment
16 effective immediately and is hereby remanded to the custody of
17 the United States Marshal and the Bureau of Prisons, and he
18 shall be given credit for all time heretofore served in federal
19 custody on this charge.

20 Counselors, are there any other matters for
21 consideration by the Court before this sentencing hearing is
22 concluded?

23 MS. DOOLITTLE: Your Honor, I do apologize if I
24 missed it, but I just wanted to insure that forfeiture was part
25 of the sentence ordered, specifically for the Taurus pistol,

10:27:14AM 1 Model PT738, .38 caliber, bearing Serial No. 52390 D, as in
2 David, and there are 45 rounds of .380 ammunition with the mark
3 of Blazer.

4 THE COURT: It is so ordered.

5 MS. DOOLITTLE: Thank you, Your Honor.

6 THE COURT: Any procedural objections to the
7 sentence?

8 MR. HACKNEY: Your Honor, honestly I don't know what
9 that refers to. I'm objecting to Your Honor's decision on the
10 two points for intervening arrest; and if there's a Johnson
11 issue, I don't want to be in the position of affirmatively
12 waiving that.

13 THE COURT: Okay. Well, you're not. You haven't
14 affirmatively waived it. Therefore, this sentencing hearing is
15 concluded and court is adjourned.

16 Good luck to you, Mr. Ley.

17 THE DEFENDANT: Thank you.

18 (Hearing concluded at 10:25 a.m.)

19 C E R T I F I C A T E

20 I, Shirley Ann Hall, certify that the foregoing is a correct
21 transcript for the record of proceedings in the above-titled
22 matter.

23
24 s/Shirley Ann Hall
25 Shirley Ann Hall, RDR, CRR
Official Court Reporter